IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 385 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRAVINCHANDRA D CHOKSHI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 385 of 1992

MRS SANGEETA N PAHWA for Petitioner No. 1

MR NC SOOD, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 02/12/2003

ORAL JUDGEMENT

By filing this petition, the petitioner has prayed for quashing and setting aside the departmental proceedings initiated against the petitioner by the

department.

2) The petitioner was appointed as a Surveyor by an order dated 1-5-1952. While he was in service, he was subjected to a criminal case for the offences punishable under Sections 467, 468, 471 and 477 of the Indian Penal Code. The said case was registered as Criminal Case No.499/1979. The petitioner was ultimately acquitted by the Court in March 1981 and according to the petitioner, the said order was confirmed in Criminal Appeal by the High Court. The petitioner, who was earlier placed under suspension, in view of the pendency of the criminal case, was, thereafter, reinstated in service by the department. As per the averment in the petition in para 9, he was subsequently promoted as Maintenance Surveyor from the post of Surveyor, by giving deemed date of promotion. Subsequently, after a lapse of about ten years from the date of acquittal, the petitioner was served with a charge sheet dated 8-7-1991 by the department. The petitioner gave reply to the said charge sheet, denying the charges levelled against him.

3) The department, however, continued the departmental inquiry against the petitioner and the petitioner has ultimately approached this Court by way of present petition and it is prayed that the departmental inquiry initiated against the petitioner may be quashed and set aside.

4) It is the say of the petitioner that he was acquitted by the Criminal Court and it is not open for the department to initiate inquiry against the petitioner and that too, after a period of ten years from the date of acquittal. It seems that during the pendency of this petition, the departmental inquiry was concluded against the petitioner and he was served with a show cause notice to show cause as to why he should not be subjected to major penalty as prescribed under Rule 6 of the Gujarat Civil Services (Discipline & Appeal) Rules, 1971. The petitioner, therefore, amended the petition and challenged the aforesaid show cause notice, which was given in connection with the proposed penalty. By amendment, various points have been taken by the petitioner to the effect that the inquiry was not in consonance with the principles of natural justice and that the petitioner was not allowed to lead appropriate evidence and he was also not allowed to cross-examine the witnesses of the department. By amendment, the petitioner has also averred that he was not permitted to have the services of a legal practitioner. By way of amendment, it is prayed that the said show cause notice

regarding proposed penalty may also be quashed and set aside. The said show cause notice dated 24-1-1992 is produced in the compilation.

5) This Court has also granted interim relief as prayed for by way of amendment in para 24-BB. By the said interim relief, the department was restrained from proceeding further with the departmental inquiry in question, in pursuance of the aforesaid show cause notice of penalty. The said interim relief is in existence since 1992. It is not in dispute that, in the meanwhile, the petitioner has already retired in the year 1992. This matter is accordingly pending before this Court since last more than a decade.

6) The petition is resisted by the Government by filing an affidavit-in-reply. Mr.Sood, learned AGP, has submitted that this petition is premature as it is filed at the second show cause notice stage and even though no final order was passed, the petitioner has approached this Court at an interlocutory stage. Mr.Sood has also submitted that, whether the inquiry initiated after acquittal is maintainable, or whether there is any delay in holding the inquiry, are the points which cannot be taken into consideration at this stage as the department has not passed any final order. He further submitted that the petitioner can point out all these facts by way of appropriate reply to the authority. This petition is mainly opposed by the learned AGP on the ground that this petition is premature and cannot be adjudicated by this Court at this stage. To substantiate his say, Mr.Sood has relied on the judgement of the Apex Court in the case of Chanan Singh Vs. Registrar, Co-op. Societies, Punjab & others reported in (1976) 3 SCC page 361. In the aforesaid case, it has been held by the Apex Court that the petition filed at the show cause notice stage is premature, as no punishment had been inflicted. He has also relied on another judgement of the Apex Court in the case of Air India Limited Vs. Yogeshwar Raj reported in (2000) 5 SCC page 467. In the said case, it is held by the Supreme Court that the High Court should not interfere with the decision of the disciplinary authority on facts, nor should have stayed the proceedings on the prima facie finding on the subject matter of inquiry when the disciplinary authority was yet to make up its mind.

7) By relying upon aforesaid judgements, Mr.Sood has argued that all these points can be considered by the disciplinary authority at the time of passing final order and this petition is not required to be entertained at such interlocutory stage.

8) It is required to be noted that this petition is pending before this Court since 1992 and in the meanwhile, the petitioner has already retired since long. In view of the pendency of this petition, perhaps pension and other retiral dues might not have been finalised by the department. It is also true that the department has not yet passed any final order till today in the departmental proceedings in view of the interim relief granted by this Court. Under these circumstances, the petitioner is permitted to give appropriate reply to the authority, highlighting the grievances ventilated in this petition. It is also required to be noted that during the pendency of this petition, the petitioner has already retired by way of superannuation in view of the provisions of Bombay Civil Services Rules. In that view of the matter, before taking any final decision on the basis of the show cause notice dated 24-1-1992, which is at Annexure-F, the department shall consider whether it is necessary to pass any final order imposing any punishment regarding removal or any such penalty as prescribed under the Rules, in view of the fact that the petitioner has already retired. The department may also consider the provisions of Bombay Civil Services Rules, especially Rule 189 (A) and other such rules to find out whether any punishment can now be imposed on the petitioner.

9) At the time of passing final order, the department may consider all these aspects and thereafter may pass appropriate order in accordance with law in connection with second show cause notice issued to the petitioner. It will be open for the department to consider whether it is necessary to proceed with the departmental proceedings by passing order or whether these proceedings can be dropped in view of the long delay in initiating the inquiry after acquittal of the petitioner and subsequent event of retirement of the petitioner. The department may also consider Government Resolutions/Circulars, if any, in connection with holding inquiry after the acquittal of a person. All these points regarding delay in initiating inquiry, acquittal of the petitioner from the criminal case and such other points raised in this petition may also be taken into consideration by the department. Since the matter is at large before the disciplinary authority and no order is passed, this Court is not adjudicating this matter. It is clarified that if any adverse order is passed against the petitioner, it will be open for the petitioner to challenge the same in accordance with law. After conclusion of the aforesaid proceedings, the

department may also consider the question about retirement dues, if at all required to be paid to the petitioner as per the rules and regulations and subject to the order which may be passed by the authority in this connection. Since the proceedings are very old, the department is directed to complete the same as early as possible and preferably within a period of two months from today, as per the observations made in this order.

10) Since this Court has not adjudicated this matter on merits as it is premature, all the questions raised in this petition are left for the decision to the authority. This petition is accordingly disposed of in view of what is stated above. Rule is discharged with no order as to costs. Interim relief granted earlier stands vacated.

(P.B.Majmudar,J.)
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